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Title:

ALP 5KA Broadcast script (handwritten) re Rupert Max Stuart

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Good evening. The ^{latest} ~~last~~ episode in the story of the inquiry ~~and~~ into the conviction & sentence of Rupert Max Stuart has not been any happier than a number of those which preceded it.

Let me recount the story to you. Stuart was tried & convicted of a shocking murder early in the year. At his trial he was unable to bear his statements & his defence read to the jury, although had he not been illiterate he could have read it himself. He was thus, as an illiterate, put in a less favourable position to make his defence than a literate man. However, that is the law in South Australia. The Full Court of S.A. ^{appeal} dismissed the

On appeal to the High Court the High Court held that a statement to the jury by the Crown Solicitor had been one which was unlawful, but that its ^{unlawful} effect had been nullified by a statement to the jury by the trial judge, & where the Court expressed uneasiness, it dismissed the appeal. A subsequent appeal to the Privy Council was also dismissed.

In the meantime public uneasiness was aroused by a number of things - statements by Stuart's former employers giving him an alibi for the time of the murder, statements by various people that Stuart's knowledge of English was such that he could have spoken the words of the confession which the police had sworn were his exact words, & statements by certain police officers involved in the case as to Stuart's legal position & background which were quite inaccurate. When the Labor Party gave voice

of its intention to debate the matter in the House of Assembly, the Premier undertook to appoint a Royal Commission to go into all aspects of the matter.

He then announced the appointment of the Royal Commission consisting of 3 judges of whom one had been the trial judge, & another the chairman of the Full Court on its hearing of the appeal. He also announced restricted terms of reference for the commission - further questioning in the House forced him to agree that if the parties needed it the Commission would go beyond those terms, & an assurance that Stearns' confession would be investigated.

The inquiry then proceeded, and public confidence was not increased by a number of unhappy incidents which occurred before the commission, culminating in the withdrawal from the commission of Stearns' counsel Mr. Spence B.C. on the ground that he had been improperly stopped in cross-examination of a police witness.

Public controversy became widespread & eminent legal authorities gave it as their opinion that it was a most undesirable & peculiar position that judges who had been involved in the proceedings before the Court should now sit on a Commission of inquiry on the very matter which they were now asked to examine.

The Labor Party then sought to move in the House of Assembly that the Commission be reconstituted with other Commissioners. The Government, in what is now typical of Sir Thomas Playford's regard for the accountability of the Executive Government to Parliament, used its members to oppose

Parliament the right to discuss the matter. As a result, the Labor Party moved a motion of no confidence in the Board on the grounds that it had refused to answer to Parliament for its action in appointing the Commission.

In the course of the debate voting was ^{the} widespread public criticism of the appointment of ~~the~~ two of its judges, canonized by the words of eminent legal authorities cited, but it was revealed that the trial judge, quite properly at the time, had indicated his opinion as to conclusions which the jury could draw from the evidence before them, and was not asked to inquire into those opinions, and that the chairman of the appeal court, sitting as a judge, had said of submissions made as to the way in which the confession was obtained from Steward said "That is utter rubbish" and a little later "If you ask me whether I believe that - I don't believe it." Harry expressed the strongest possible personal view on the matter of the accusations against the police over the way in which the confession was obtained - he was now asked to sit & enquire into that very matter as chairman of the Commission. This was of course, a complete departure from accepted British practice in the administration of justice.

The Premier in answer to the censure motion said at first that the judges were considering entirely new matters. Let me read to you from the Hansard record of the debate: - (Hansard p 671.)

He then changed the subject so he did not have to answer the undeniable fact that the Commissioners were being

asked to consider matters which had been before
 them as ^{primary} judges - he did not return to the
 point of the Premier has now answered it. ^{He}
^{will not} ~~cannot~~ because he cannot. The current
 motion was lost - the Govt. did not want
 to Parliament, (and the Premier at the end of
 his speech gave an undertaking - at least
 to you. - (Hansard p. 673.)

The Commission then proceeded, & reached
 its decision as to its findings.

Strangely enough last Tuesday afternoon,
 on the last day of the Parliamentary session,
 and after ^{the time for} questions & voting of motions
 had expired, the report of the Commission
 was produced in the House by the Premier
 who tabled it in the middle of a debate
 on the Hume-Parkmore Bill.

There was no opportunity left for a debate
 on the matter, so before the House adjourned
 I obtained the suspension of standing orders
 to ask whether the Govt. would call Parliament
 together as soon as possible to provide an
 opportunity to debate the report. The report
 is the responsibility of the Executive Govt. &
 it is normal parliamentary practice to provide time
 to debate such a report speedily to members of
 Parliament.

The Premier however, is unimpeachably
 my regard for what is normal practice in
 representative government - he doesn't at all
 believe in democracy at all. So he said
 he had no intention of calling Parliament together
 to debate the report from our three judges -
 (they were not of course, in this matter, acting
 as judges at all - but as commissioners,
 appointed to ~~exp~~ inquire & report & for
 whose report the Executive is accountable.)
 He had to be said, given any undertaking

To provide an opportunity for debate.

This of course, is as inconsistent with
 normally accepted canons of justice as were
 some of his previous activities and deliberate
 misrepresentation of certain events which had
 occurred in relation to the Commission.

~~But it is too much to expect~~

So the thing is to be pushed up by
 the Government. I personally believe
 that the individual commissioners used
 their great endeavours to act impartially
 and properly & would ~~not~~ do their
 duty as they saw it without question.
 But I personally do not see how two
 of them at any rate could approach this
 Commission with an open mind. There
 are matters in the report which most
 strongly call for debate in the House,
 and which cannot be calculated to allay
 the anxieties which have been so
 widely expressed on this matter. I
 feel this is something which must not
 be allowed to pass quietly by, & that
 Parliament must be aroused to the vigour
 which it has to safeguard the people
 of this State & to express their opinions
 upon the activities of the Playground
 Holdings Co.

(Start of page)

Good evening. The ~~last~~ latest episode in the story of the enquiry into the conviction & sentence of Rupert Max Stuart has not been any happier than a number of those which preceded it.

Let me recount the story to you. Stuart was tried & convicted of a shocking murder early in the year. At his trial he was unable to have his statement of his defence read to the jury, although had he not been illiterate he could have read it himself. He was thus, as an illiterate, put in a less favourable position to make his defence than a literate man. However, that is the law in South Australia. The Full Court of S.A. dismissed the appeal.

On appeal to the High Court the High Court held that a statement to the jury by the Crown Solicitor had been one which was unlawful, but that its unlawful effect had been nullified by a statement to the jury by the trial judge, & while the Court expressed uneasiness, it dismissed the appeal. A subsequent appeal to the Privy Council was also dismissed.

In the meantime public awareness was aroused by a number of things – statements by Stuart's former employers giving him an alibi for the time of the murder, statements by various people that Stuarts knowledge of English was such that he couldn't have spoken the words of the confession which the police has sworn were his exact words, & statements by certain police officers involved in the case as to Stuarts legal position & background which were quite inaccurate.

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of its intention to of its intention to debate the matter in the House of Assembly, the Premier undertook to appoint a Royal Commission to go into all aspects of the matter.

He then announced the appointment of the Royal Commission consisting of 3 judges, of which one had been the Trial judge, & another the chairman of the Full Court on its hearing of the appeal. He also announced restricted terms of reference for the commission – further questioning in the House forced him to agree that if the parties needed it the Commission would go beyond their terms, & an assurance that Stuarts confession would be investigated.

The inquiry then proceeded, and public confidence was not increased by a number of unhappy incidents which occurred before the commission, culminating in the withdrawal from the commission of Stuarts counsel Mr. Sherd Q.C. on the ground that he had been improperly stopped in cross-examination of a police witness.

Public controversy became widespread & eminent legal authorities gave it as their opinion that it was a most undesirable & peculiar position that judges who had been involved in the proceedings before the Courts should now sit on a Commission of inquiry on the very matters which they were now asked to examine.

The Labor Party then sought to move in the House of Assembly that the Commission be reconstituted with other Commissioners. The Government, in what is now typical of Sir Thomas Playfords regard for the accountability of the Executive Government to Parliament, used its numbers to refuse

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Parliament the right to discuss the matter. As a result, the Labor Party moved a motion of no confidence in the Govt. on the grounds that it had refused to account to Parliament for its action in appointing the Commission.

In the course of the debate not only was the widespread public criticism of the appointment of the two of the judges concerned by the most eminent of legal authorities cited, but it was revealed that the Trial judge, quite properly at the time, has indicated his opinion as to conclusions which the jury could draw from the evidence before them, and was not asked to inquire into those opinions, and that the chairman of the appeal court, sitting as a judge, had said of submissions made as to the way in which the confession was obtained from Stuart said "That is utter rubbish" and a little later "If you ask me whether I believe that – I don't believe it". Having expressed the strongest possible personal view on the matter of the accusations against the police over the way in which the confession was obtained – he was now asked to sit & enquire into that very matter as chairman of the Commission. This was of course, a complete departure from accepted British practice in the administration of justice.

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He then changed the subject so he did not have to answer the undeniable fact that the Commissioners were being

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asked to consider matters which had been before them previously as judges – he did not return to the point & the Premier has never answered it. He will not because he cannot. The censure motion was lost - the Govt. did not account to Parliament, (and the Premier at the end of his speech gave an undertaking – let me read it to you. – (Hansard p. 673.)

The Commission then proceeded, & reserved its decision as to its findings.

Strangely enough last Thursday afternoon, on the last day of the Parliamentary session, and after the time for questions & notices of motion had expired, the report of the Commission was produced in the House by the Premier who tabled it in the middle of a debate on the Hire-Purchase bill.

There was no opportunity left for a debate on the matter, so before the House adjourned I obtained the suspension of standing orders to ask whether the Govt. would call Parlt. together as soon as possible to provide an opportunity to debate the report. The report is the responsibility of the Executive Govt. & it is normal parliamentary practise to provide time to debate such a report speedily to members of Parlt.

The Premier however, is untrammelled by my regard for what is normal practice in representative government - he doesn't after all believe in democracy at all. So he said he had no intention of calling Parlt. together to debate the report from our three judges - (they were not of course, in this matter, acting as judges at all - but as commissioners appointed to inquire & report & for whose report the executive is accountable.) He hadn't he said, given any undertaking

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to provide an opportunity for debate.

This of course, is as inconsistent with normally accepted concerns of justice as were some of his previous activities and deliberate misrepresentations of certain events which had occurred in relation to the commission.

So the thing is to be hushed up by the Government. I personally believe that the individual commissioners used their great endeavours to act impartially and properly and would do their duty as they saw it without question. But I personally do not see how two of them at any rate could approach this Commission with an open mind. There are matters in the report which most strongly call for debate in the House, and which cannot be calculated to allay the anxieties which have been so widely expressed on this matter. I feel this is something which must not be allowed to pass quietly by, and that Parliament must be afforded the rights which it has to safeguard the people of this State & to express their opinions upon the activities of the Playford dictatorship.

Goodnight.